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Attorney for Plaintiff

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF OREGON

In re:

JEROD KEITH NUNN and  
SANDRA KAY NUNN,

Debtors,

BETTY DAVIS,

Plaintiff,

v

JEROD KEITH NUNN and  
SANDRA KAY NUNN,

Defendants.

Case No. 10-64059-aer13

Adv. Proc. No. 10-06218-aer

COMPLAINT  
(Denial of Discharge)

Plaintiff alleges:

1. This is a core proceeding over which the Court has jurisdiction pursuant to 28 USC §§ 157 and 1334 and United States District Court Bankruptcy Local Rule 2100. The matter in controversy arises under 11 USC §523. Venus is proper pursuant to 28 USC §1409.

2. This adversary proceeding is one arising in the case of *Jerod Keith Nunn and Sandra Kay Nunn*, U. S. Bankruptcy Court Case No. 10-64059-aer13 under Chapter 13 of Title 11. Debtors filed a voluntary petition under Chapter 13 of the Bankruptcy Code on June 30, 2010.

Complaint (Denial of Discharge)

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1           3.       Plaintiff has a stipulated judgment against Defendants for \$104,000 entered  
2 in Klamath County Circuit court on October 29, 2009 (a copy of which is attached hereto  
3 marked Exhibit "A").

4  
5                                   **FIRST CLAIM FOR RELIEF**

6                                   **(Money Obtained by False Pretenses, False Representation or Fraud)**

7           4.       Plaintiff realleges paragraphs 1 through 3.

8           5.       On or about November 24, 2004 debtors obtained the sum of \$235,829.85  
9 of Plaintiff's funds into their bank account by falsely representing to Plaintiff she needed  
10 to put those funds into their account for her protection.

11          6.       Thereafter Defendants paid the sum of \$212,000.00 from Plaintiff's funds  
12 and acquired title, in their name alone, (again insisting this was for Plaintiff's protection)  
13 to the newly constructed residence located at 5163 Regency Drive, Klamath Falls, Oregon  
14 97603 and legally described as Lot 24, Tract 1400 Regency Estates – Phase 2, according to  
15 the official plat thereof on file in the office of the Clerk of Klamath County Oregon.  
16 Defendants subsequently acquired additional funds of Plaintiffs and used said funds for  
17 their benefit.

18          7.       Thereafter litigation was commenced in Klamath County Circuit Court  
19 Case No. 06-02299 CV to recover Plaintiff's property and on October 29, 2009 a  
20 Stipulated judgment was entered in said case awarding Plaintiff judgment in the amount of  
21 \$104,000 with interest thereon at 9% from November 18, 2008.

22                                   **FIRST CLAIM FOR RELIEF**

23                                   **Count 2**

24                                   **(Fraud or Defalcation While Acting in a Fiduciary Capacity,  
25                                   Embezzlement or Larceny)**

26          8.       Plaintiff realleges paragraphs 1 through 7.

27          9.       The funds obtained and used by Defendants and, each of them were,  
28 received and used by them while acting in a fiduciary capacity. Defendants used Plaintiff's  
funds for their benefit and in so doing willfully neglected their fiduciary duty to Plaintiff.

1 Defendants acknowledged said conduct in their Stipulated Judgment attached hereto as  
2 Exhibit "A".

3 WHEREFORE, Plaintiff prays for a judgment as follows:

4 1. Declaring Plaintiff's Klamath County Circuit Court Judgment in Case No.  
5 06-02299 CV non-dischargeable.

6 2. Granting judgment in Plaintiff's favor and against Defendants and each of  
7 them, for the amount remaining unpaid on said judgment, which amount shall be  
8 ascertained at trial.

9 3. For Plaintiff's costs and disbursements; and

10 4. For all other relief which is just and equitable.

11 DATED this 1<sup>st</sup> day of October, 2010.

13 /s/ Douglas V. Osborne

14 Douglas V. Osborne, OSB #72189

15 Attorney for Plaintiff

OCT 28 PM 4:44

CLERK OF COURT

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF KLAMATH

**ENTERED**

10/29/09  
**BY SMB**

BETTY J. DAVIS,

Plaintiff,

vs.

JEROD NUNN and  
SANDRA NUNN

Defendants.

Case No. 06-02299 CV

STIPULATED GENERAL JUDGMENT

THIS MATTER came before the above-entitled Court for a Settlement Conference on November 18, 2008. Plaintiff appeared and was represented by counsel, Douglas V. Osborne, Jerod Nunn appeared pro se and Sandra Nunn appeared and was represented by counsel, Richard Dalrymple.

The parties having reached an agreement for settlement that was put on the record before the court on November 18, 2008. Having heard the settlement recited before it the Court makes the following findings:

Defendants, and each of them while acting in a fiduciary capacity, did obtain funds from the sale of Plaintiff's California residence in the sum of \$287,440.68.

Some of said funds were invested in a residence in Oregon located at 5163 Regency Drive, Klamath Falls, Oregon in the name of Defendants. Defendants received a benefit from residing in said residence.

Some of the other funds were also used for the benefit of Defendants. The parties having a desire to settle the dispute between them, now therefore:

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**Exhibit A**

1 IT IS HEREBY ORDERED:

2 1. The real property described as 5163 Regency Drive, Klamath Falls, Oregon 97603  
3 and legally described as Lot 24, Tract 1400 Regency Estates-Phase 2 (herein referred to as  
4 "the Property") is hereby awarded to Plaintiff, Betty J. Davis. Defendants are directed to  
5 immediately sign a Warranty Deed transferring title to Plaintiff (Plaintiff acknowledges  
6 receipt of said deed).

8 2. Plaintiff shall have judgment against the Defendants, jointly and severally, for  
9 \$335,000 effective November 18, 2008. Said judgment reduced to \$104,000 as set forth  
10 below.  
11

12 3. The Property should be immediately listed for sale. Defendants are to pay rent  
13 starting December 1, 2008 in the amount of \$1,000.00 per month to be received by Plaintiff  
14 on the first of each month (Plaintiff acknowledges receipt of said rent). If the sale of the  
15 Property does not close within 6 months, Plaintiff shall be paid in the amount of \$500.00 per  
16 month starting July 1, 2009 through December 2009, due no later than the 10<sup>th</sup> of each  
17 month. Payments shall be made payable to Betty J. Davis in the form of a cashier's check  
18 mailed directly to Betty J. Davis at 3979 Beechwood Court, Concord, CA 94519. Said  
19 \$500.00 payments are to be credited against said judgment.  
20

21 4. The Property shall be inspected and the inspection videotaped (the parties  
22 acknowledge said inspection and video taping have been completed).  
23

24 5. If the Property does not sell within six months, each party shall have an independent  
25 appraisal conducted on the Property and the two appraisal values averaged. Those two  
26  
27  
28

1 appraisals having been completed average \$231,000 and Defendants are hereby credited for  
2 said amount against the judgment herein resulting in a final judgment of \$104,000.

3 6. Defendants are to be provided with 30 days notice before closing in which to move.

4  
5 7. Sandra Nunn's counsel, within a reasonable time, shall provide proof of insurance on  
6 the Property to Plaintiff's counsel (Plaintiff acknowledges receipt of the same).

7 8. Each party shall be responsible for attorney's fees and costs.

8  
9 9. Plaintiff agrees to the dismissal of the pending Klamath County criminal cases  
10 against Defendant Jerod Nunn, case number 07-01137 CR and Defendant Sandra Nunn, case  
11 number 07-01138 CR. Plaintiff agreeing said criminal charges be dismissed and civilly  
12 compromised as set forth in this settlement.

13 10. The judgment shall accrue interest at the rate of 9% per annum from November 18,  
14 2008.

15  
16 11. Plaintiff agrees not to execute on the judgment prior to January 1, 2010 provided all  
17 payments are made to Plaintiff as set forth above. Thereafter, Plaintiff is entitled to enforce  
18 her judgment as provided by law.

19  
20 MONEY AWARD

- 21 1. Judgment Creditor: Betty J. Davis  
22 3979 Beechwood Court  
23 Concord, CA 94519  
24 Phone: 925-827-0930
- 25 2. Judgment Creditor's Attorney: Douglas V. Osborne  
26 439 Pine Street  
27 Klamath Falls, OR 97601  
28 Phone: 541-884-8152

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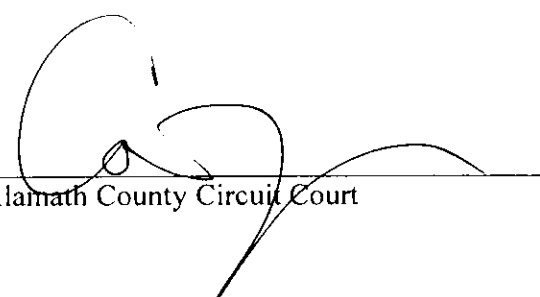
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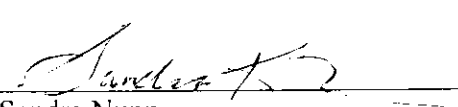
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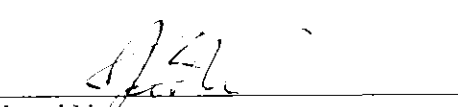
- 1 3. Judgment Debtors: Jerod Nunn and Sandra Nunn  
2 PO Box 8083  
3 Klamath Falls, OR 97602  
4 Jerod's DOB: 06/23/68  
5 Sandra's DOB: 11/30/66  
6 Jerod's ODL: 7399341  
7 Sandra's ODL: 7399349  
8  
9 4. Judgment Debtors' Attorney: NA  
10  
11 5. Principal Amount of Judgment: \$104,000  
12  
13 6. Plaintiff is entitled to pre- and post-judgment interest at a rate of 9% per annum on  
14 the sum of \$104,000 from November 18, 2008.  
15

16 DATED: 10/28/09

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Klamath County Circuit Court

APPROVED AS TO FORM:

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27  
28  
  
Sandra Nunn

  
Jerod Nunn

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